

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 942

Introduced by Senator Dutton

February 3, 2010

~~An act to add Sections 11349.10 and 11349.11 to the Government Code, relating to the State Auditor. An act to amend Section 11349.3 of, to add Sections 11349.10 and 11349.11 to, and to add Article 5.5 (commencing with Section 11348.5) to Chapter 3.5 of Part 1 of Division 3 of Title 2 of, the Government Code, relating to regulations.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 942, as amended, Dutton. ~~State Auditor: analysis of regulations. Regulations: review process.~~

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies, including a requirement that the notice of proposed action contain prescribed cost estimates associated with the proposed regulation. Existing law also provides for the review of these regulatory actions by the Office of Administrative Law.

This bill would establish an Economic Analysis Unit within the office. The bill would require agencies to make publicly available and submit to the unit specified cost estimates that pertain to a proposed regulation and specified information used to develop the cost estimates, as prescribed. The bill would require the unit to review final revised cost estimates for regulations that the agency determines to have a cost estimate of \$50,000,000 or more. The bill also authorizes a stakeholder to petition the director of the office to direct the unit to review a regulation that does not meet the \$50,000,000 cost estimate threshold.

The bill requires the unit to approve or reject the cost estimates of regulations that it reviews, as specified.

This bill would require each agency to review each regulation adopted prior to January 1, 1990, and to develop a report with prescribed information that shall be submitted to the Legislature on or before January 1, 2013. The bill would also require each agency, on or before January 1, 2018, and at least every 5 years thereafter, to conduct additional reviews of regulations that have been in effect for at least 20 years, as specified, and to submit an annual report to the Legislature that identifies the regulations reviewed during that year and the associated findings.

~~Under existing law, the State Auditor is required to perform financial and performance audits as directed by statute. Existing law also requires the Office of Administrative Law to review existing regulations, at the request of a legislative committee, to determine if they meet specified standards. If the office determines that the regulations do not meet those standards, existing law requires the office to order the repeal of those regulations, pursuant to specified procedures.~~

~~This bill would require the State Auditor to survey and perform a cost-benefit analysis of specified regulations that impose a cost on private persons or business, publish a catalog of these regulations and other findings related to them in the California Regulatory Notice Register, and consider public comment on them. The bill would require the State Auditor, if he or she determines that any of the regulations yield more costs to private persons or business than benefits, to notify the adopting agency in writing the reasons for its determination and to publish this determination and the reasons for it in the California Regulatory Notice Register. The bill would require the adopting agency to respond in writing to the State Auditor regarding whether the agency will amend or repeal the regulation or decline to do so. The bill would require the State Auditor to review and consider all information submitted by the agency in this connection and, if the State Auditor confirms that the cost of a regulation to private persons or businesses exceeds its benefits, he or she would be required to prepare a statement specifying the reasons for its determination and to recommend to the Legislature that it enact legislation that will function to amend or repeal the regulation at the current legislative session. The bill would require that this catalog, analysis, and review process be subject to public comment, as specified.~~

~~This bill would also require that all regulations adopted after January 1, 2011, be repealed 10 years after their effective date unless the State Auditor determines, as specified, that the benefits of the regulation to private persons or businesses exceed its costs.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 5.5 (commencing with Section 11348.5)
2 is added to Chapter 3.5 of Part 1 of Division 3 of Title 2 of the
3 Government Code, to read:

4
5 Article 5.5. Cost Estimate Analysis of Proposed Regulations

6
7 11348.5. (a) There is hereby established within the office an
8 Economic Analysis Unit that shall review cost estimates of
9 proposed regulations, as provided for in this article.

10 (b) For purposes of this article, “unit” means the Economic
11 Analysis Unit.

12 11348.51. (a) (1) Each agency shall, at the time it
13 disseminates the notice of proposed action as required by Section
14 11346.4, also disclose to the public any cost estimate required
15 pursuant to Section 11346.5 and the nonproprietary information
16 used to develop those cost estimates.

17 (2) Each agency shall, at the time when it disseminates the
18 notice of proposed action as required by Section 11346.4, also
19 submit to the unit any cost estimate required pursuant to Section
20 11346.5 and all information used to develop those cost estimates,
21 including any proprietary information not disclosed to the public.
22 The unit shall treat as confidential any information identified as
23 proprietary by the submitting agency. The agency shall also submit
24 to the unit any information submitted to the agency from parties
25 affected by the proposed regulation.

26 (b) Each agency shall disclose to the public and submit to the
27 unit, in the same manner prescribed in subdivision (a), final revised
28 cost estimates for a proposed regulation 30 working days prior to
29 submitting the proposed regulation to the office for review pursuant
30 to Article 6 (commencing with Section 11349).

1 11348.52. (a) (1) The unit shall review final revised cost
2 estimates submitted pursuant to subdivision (b) of Section 11348.51
3 for a proposed regulation for which the agency has provided an
4 estimated cost of fifty million dollars (\$50,000,000) or more.

5 (2) The unit may review cost estimates submitted pursuant to
6 subdivision (a) of Section 11348.51 for a proposed regulation for
7 which the agency has provided an estimated cost of fifty million
8 dollars (\$50,000,000) or more. If the unit reviews cost estimates
9 for a proposed regulation pursuant to this paragraph, it shall
10 conduct the review and make determinations in the manner
11 provided pursuant to subdivision (c).

12 (b) A stakeholder may petition the office to direct the unit to
13 review final revised cost estimates for a proposed regulation that
14 has an estimated cost that is less than fifty million dollars
15 (\$50,000,000). The director of the office shall be authorized, in
16 his or her sole discretion, to approve or deny the petition.

17 (c) (1) The unit review of the cost estimates shall determine if
18 the submitting agency used an appropriate methodology to develop
19 those cost estimates and whether the submitted cost estimates are
20 a fair assessment of the estimated cost of the regulation based on
21 the information available to the agency to develop the cost
22 estimate.

23 (2) The unit shall approve or reject a cost estimate within 50
24 working days. If the unit rejects the cost estimate, the proposed
25 regulation shall be returned to the agency with a written statement
26 of reasons for the rejection, which shall also be made available
27 to the public. If the unit approves the cost estimate, then the unit
28 shall notify the agency and the office that the proposed regulation
29 is eligible for final approval by the office pursuant to Article 6
30 (commencing with Section 11349).

31 11348.53. Subject to the requirements of subdivision (b) of
32 Section 11348.51, the office may concurrently review a proposed
33 regulation as required pursuant to Article 6 (commencing with
34 Section 11349), except that the office shall not approve a regulation
35 pursuant to Section 11349.3 that is being concurrently reviewed
36 by the unit until the EAU approves the cost estimates for that
37 regulation.

38 SEC. 2. Section 11349.3 of the Government Code is amended
39 to read:

1 11349.3. (a) ~~The Subject to Section 11348.53, the~~ office shall
2 either approve a regulation submitted to it for review and transmit
3 it to the Secretary of State for filing or disapprove it within 30
4 working days after the regulation has been submitted to the office
5 for review. If the office fails to act within 30 days, the regulation
6 shall be deemed to have been approved and the office shall transmit
7 it to the Secretary of State for filing.

8 (b) If the office disapproves a regulation, it shall return it to the
9 adopting agency within the 30-day period specified in subdivision
10 (a) accompanied by a notice specifying the reasons for disapproval.
11 Within seven calendar days of the issuance of the notice, the office
12 shall provide the adopting agency with a written decision detailing
13 the reasons for disapproval. No regulation shall be disapproved
14 except for failure to comply with the standards set forth in Section
15 11349.1 or for failure to comply with this chapter.

16 (c) If an agency determines, on its own initiative, that a
17 regulation submitted pursuant to subdivision (a) should be returned
18 by the office prior to completion of the office's review, it may
19 request the return of the regulation. All requests for the return of
20 a regulation shall be memorialized in writing by the submitting
21 agency no later than one week following the request. Any
22 regulation returned pursuant to this subdivision shall be resubmitted
23 to the office for review within the one-year period specified in
24 subdivision (b) of Section 11346.4 or shall comply with Article 5
25 (commencing with Section 11346) prior to resubmission.

26 (d) The office shall not initiate the return of a regulation pursuant
27 to subdivision (c) as an alternative to disapproval pursuant to
28 subdivision (b).

29 SEC. 2. *Section 11349.10 is added to the Government Code,*
30 *to read:*

31 11349.10. (a) *Each agency shall review each regulation*
32 *adopted prior to January 1, 1990. The review shall be developed*
33 *into a report that includes, but is not limited to, the following*
34 *information for each regulation:*

35 (1) *The date that the office approved the regulation.*

36 (2) *The purpose.*

37 (3) *The statutory authority.*

38 (4) *The identification of impacted sectors.*

39 (5) *The direct costs by sector.*

40 (6) *Whether the regulation is duplicative of other regulations.*

1 (7) *Whether the regulation is still relevant.*

2 (8) *Whether the regulation needs to be updated in order to*
3 *become more effective or less burdensome.*

4 (b) *The agency shall consult with parties affected by the*
5 *regulation in developing the report.*

6 (c) *The agency shall submit the report to the Legislature on or*
7 *before January 1, 2013.*

8 (d) *To the extent that an agency is a component member of*
9 *another agency, the member agency shall submit a copy of its*
10 *report to the highest ranking agency head prior to submitting the*
11 *report to the Legislature as required by this section. The agency*
12 *head shall review the reports for each component agency for the*
13 *purpose of identifying duplicative or conflicting regulations*
14 *between departments.*

15 SEC. 3. *Section 11349.11 is added to the Government Code,*
16 *to read:*

17 11349.11. (a) *On or before January 1, 2018, and at least every*
18 *five years thereafter, each agency shall review each regulation*
19 *that is at least 20 years old and has not been reviewed within the*
20 *last 10 years. The review shall be developed into a report that*
21 *shall be submitted to the Legislature and includes, but is not limited*
22 *to, the following information for each regulation:*

23 (1) *The date that the office approved the regulation.*

24 (2) *The purpose.*

25 (3) *The statutory authority.*

26 (4) *The identification of impacted sectors.*

27 (5) *The direct costs by sector.*

28 (6) *Whether the regulation is duplicative of other regulations.*

29 (7) *Whether the regulation is still relevant.*

30 (8) *Whether the regulation needs to be updated in order to*
31 *become more effective or less burdensome.*

32 (b) *Each agency shall submit an annual report to the Legislature*
33 *that identifies the regulations reviewed during the previous year*
34 *and the associated findings.*

35 SECTION 1. ~~Section 11349.10 is added to the Government~~
36 ~~Code, to read:~~

37 ~~11349.10. (a) Upon appropriation by the Legislature, the State~~
38 ~~Auditor shall review all existing regulations that impose a cost on~~
39 ~~private persons or business, excluding regulations that give effect~~
40 ~~to federal law or impose costs on the basis of that private person~~

1 or business voluntarily contracting with the government. The State
2 Auditor shall make a preliminary determination of which
3 regulations appear to impose the most significant cost on private
4 persons or businesses, and shall prepare a catalog of these
5 regulations that lists them in order of cost, with those regulations
6 with the highest cost listed first. The State Auditor may decline to
7 include those regulations for which the costs appear to be
8 insignificant. The catalog shall be completed within one year of
9 completion of the review, and shall include all of the following:

- 10 (1) A brief description of the regulation.
11 (2) The effective date of the regulation.
12 (3) Whether the regulation is duplicative of any other regulation.
13 (4) An identification of the business sectors, if any, impacted
14 by the cost imposed by the regulation.

15 (b) Based on the regulations listed, the State Auditor shall
16 publish the catalog in the California Regulatory Notice Register
17 and consider the written comments submitted by interested persons
18 as to the order of the regulations listed in the catalog. The public
19 comment period and any revisions made to the catalog shall be
20 completed within 30 days of the date of publication.

21 (c) Following the publication of the list in subdivision (b), the
22 State Auditor shall prepare a preliminary cost-benefit analysis of
23 each regulation in the order listed in the catalog, by applying the
24 standards established by the Federal Office of Management and
25 Budget, set out in the most recent publication of "Circular A-4"
26 (Office of Management and Budget), and shall make a preliminary
27 analysis of whether the cost of each regulation to a private person
28 or business outweighs its benefit. In making this analysis, the State
29 Auditor shall analyze the potential prospective costs and benefits
30 of each regulation over the next five to 10 years. During the period
31 of the preliminary analysis made pursuant to this subdivision, all
32 information available to the State Auditor relating to the analysis
33 shall be made available to the public.

34 (d) Upon completion of the preliminary cost-benefit analysis,
35 the State Auditor shall publish its findings in the California
36 Regulatory Notice Register, and shall consider the written
37 comments submitted by interested persons. The public comment
38 period and any revisions made to the preliminary cost-benefit
39 analysis shall be completed within 30 days of the date of
40 publication of the analysis. The State Auditor may change its

1 findings based on the information received from the public during
2 the comment period.

3 (e) The State Auditor shall prepare a final cost-benefit analysis
4 within 60 days from the close of the public comment period
5 described in subdivision (d). The final cost-benefit analysis shall
6 list each regulation under which the cost to private persons or
7 business exceeds the benefits of the regulation.

8 (f) If the State Auditor determines that any of the regulations
9 subject to the analysis yield more costs to private persons or
10 business than benefits, the State Auditor shall notify the adopting
11 agency, and specify, in writing, the reasons for its determination
12 that the cost of the regulation exceeds its benefits. The reasons for
13 his or her determination shall be made available to the public. The
14 State Auditor shall also publish this determination and the reasons
15 for it in the California Regulatory Notice Register.

16 (g) On or before 60 days after the State Auditor has made the
17 notification described in subdivision (f), the agency shall respond
18 in writing to the State Auditor regarding whether the agency will
19 amend or repeal the regulation or decline to do so. Upon written
20 application by the agency, the State Auditor may extend the time
21 to respond an additional 30 days.

22 (h) (1) If the agency responds pursuant to subdivision (g) that
23 it will decline to amend or repeal a regulation, the State Auditor
24 shall review and consider all information submitted by the agency,
25 and determine whether it should reconsider its conclusion that the
26 costs of the regulation to private persons or businesses exceed its
27 benefits. The State Auditor shall make this determination within
28 60 days of receipt of an agency's response. In making this
29 determination, the office shall also review any written comments
30 submitted to it by the public within 30 days of the publication
31 required by subdivision (f) in the California Regulatory Notice
32 Register. During the period of review and reconsideration, the
33 information available to the State Auditor relating to each
34 regulation shall be made available to the public. The State Auditor
35 shall notify the adopting agency within two working days of the
36 receipt of information submitted by the public in this connection.

37 (2) If, after reconsideration, the State Auditor confirms that the
38 cost of a regulation to private persons or businesses exceeds its
39 benefits, it shall prepare a statement specifying the reasons for its
40 determination, and shall recommend to the Legislature that it enact

1 ~~legislation that will function to amend or repeal the regulation at~~
2 ~~the current legislative session. The statement and recommendation~~
3 ~~shall be delivered to the adopting agency and the Legislature, and~~
4 ~~shall be made available to the public and the courts.~~

5 (i) ~~The requirements of this chapter do not apply to the actions~~
6 ~~of the State Auditor in carrying out this section.~~

7 ~~SEC. 2.—Section 11349.11 is added to the Government Code,~~
8 ~~to read:~~

9 ~~11349.11.—All regulations adopted on or after January 1, 2011,~~
10 ~~shall be repealed 10 years after their effective date unless the State~~
11 ~~Auditor determines, pursuant to Section 11349.10, that the benefits~~
12 ~~of the regulation to private persons or businesses exceed its costs.~~